

STATEMENT OF THE CASE

Loretta Harris (“Mother”) appeals the termination of her parental rights as to her minor children, K.M., N.M., B.M., M.M. and P.M.

We affirm.

ISSUES

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights.

FACTS

K.M. was born on February 3, 1995; N.M. was born on October 21, 1996; B.M. was born on September 16, 2002; and twins, M.M. and P.M., were born on October 15, 2003. Tim Manus (“Father”) is the father of all five children. Although Mother and Father resided together, they were never married.

On October 30, 2003, the Tippecanoe Office of Family and Children (the “OFC”) received a report of neglect, namely that Mother and Father were “low functioning” and had to be sent home from the hospital following the birth of M.M. and P.M. due to “poor hygiene.” (App. 293). The report also alleged that the twins were “at high-risk of contacting salmonella” because there was an iguana in the home. (App. 293). Following an investigation, the OFC substantiated the allegations, finding that the residence was “somewhat dirty,” with “a rabbit cage on the floor with feces in the bedding,” the bedroom “cluttered with laundry,” and a “bird cage on the stairs” (App. 296). The OFC recommended an informal adjustment, with arrangements made “for the family to clean the home” and “work with intensive services,” while receiving “services from

home health care and First Steps.” (App. 296). The OFC initiated an “in-home” children-in-need-of-services (“CHINS”) case “to ensure service participation.” (App. 297). Therefore, the children were made wards of the OFC while they continued to remain in their parents’ care. The CHINS case was dismissed in June of 2004.

On February 8, 2005, the OFC received another report of neglect. Following an investigation, the OFC substantiated neglect, finding that “[t]he conditions of the home were marginal, no sheets on the beds, [and] some small items on the floor,” which were a concern because B.M. was a toddler. (App. 302). The OFC interviewed K.M. and N.M. N.M. reported to the OFC investigator that “she did have lice in her hair before but that [Mother] combed her hair ‘really good’ to get rid of them.” (App. 303).

On April 14, 2005, the OFC received a report, alleging that K.M. was “filthy” and “smell[ed] bad.” (App. 303). The OFC found the residence to be “marginal.” *Id.* The OFC again initiated an in-home CHINS case and provided the family with services, including services for family preservation.

On May 5, 2005, the OFC received another report of neglect, alleging that the residence smelled of urine and feces; dog feces were on the floor; B.M. was not clean; small items were within the younger children’s reach; M.M. and P.M. were confined to their cribs all day; and K.M. was expelled from school for fighting. The OFC referred the report to the case manager in charge of the in-home CHINS case.

On May 13, 2005, the OFC received a report of neglect, alleging conditions similar to those described in the May 5 report. The OFC substantiated the neglect, finding that B.M., M.M. and P.M. were left in their cribs for extensive periods of time

and that the home “continue[d] to be below the minimum standard of living at times,” with dog feces and small objects left on the floor. (App. 314). Investigators with the OFC also observed that “all five children were very dirty” and “smelled heavily of poor hygiene.” (App. 315). They further observed that P.M. “had a dirty diaper that had dried and appeared to have not been changed for quite some time.” *Id.* The OFC removed B.M., M.M. and P.M. from the home. The OFC, however, left K.M. and N.M. in the home because it was “not an immediate danger situation” for them. (App. 69).

Before a detention hearing regarding the placement of the three youngest children could be held, the OFC received a report, alleging neglect of K.M. and N.M. According to the report, K.M. and N.M. “had been sent home from school for smelling of urine and having lice.” (App. 315). The OFC removed K.M. and N.M. from the home. Following a detention hearing on May 16, 2005, the trial court granted the OFC temporary custody of all five children.

The OFC filed a petition, alleging all five children to be in need of services. On June 22, 2005, the trial court held an initial hearing, during which Mother admitted the allegations of the CHINS petition. In a predispositional report filed on July 29, 2005, the OFC recommended, among other things, that Mother 1) receive individual and family therapy; 2) have supervised visits with the children; 3) attend parenting classes; 4) obtain and maintain a source of income apart from her social security payments; 5) obtain and maintain “appropriate” house; 6) meet minimum living standards in the home; 7) not have pets; and 8) refrain from drug or alcohol use. (App. 321).

On May 10, 2006, the OFC filed petitions to terminate Mother's parental rights as to K.M., N.M., B.M., M.M. and P.M. On October 13, 2006, the trial court held a hearing on the OFC's petition.

Georgia Hahn, a case manager with Wabash Valley Hospital, specializing in "parents with children with special needs," testified as follows. Hahn began seeing Mother in November of 2005. (App. 164). Mother revealed to Hahn that she had lied about being employed because "she felt that she didn't need to find employment, but she was scared to tell people that she was not working." (App. 167). Mother also lied to Hahn about a man that was at Mother's residence, claiming that he was a relative. Mother would attend sessions with Hahn every week "for a couple of months and then [Hahn] wouldn't see her for three or four weeks at a time." (App. 169). Sometimes, Mother "would just disappear." (App. 172). Hahn "would go to [Mother's] house and she wouldn't be there." *Id.* Hahn would "try to call [Mother] and [she] wouldn't be able to contact her." *Id.* Mother missed approximately "a quarter" of her appointments with Hahn and made other appointments "only because [they] kept rescheduling[.]" (App. 177). Hahn believed "it would be very difficult" for Mother to raise her five children. (App. 170).

Drew Charters, a family-support case manager with the Community and Family Resource Center ("CFRC"), testified that he provided Mother with services, beginning in January of 2006. Charters testified that as part of the services, CFRC's case managers worked with Mother on finding "appropriate housing for the children, keeping up with . .

. all services, parenting skills, locating a job if needed, [and] budgeting skills.” (App. 18).

Charters testified that although Mother’s apartment appeared clean during the time CRFC provided services, her “furniture came out of dumpsters; [and] her home smell[ed] very bad” (App. 187). Charters also testified that Mother kept dogs in the house, despite being advised by the OFC to not keep pets. Charters testified that Mother would go through dumpsters and take items home with her.

According to Charters, all of Mother’s drug tests came back negative for drugs; a drug test taken on July 6, 2006, however, was positive for alcohol despite an order to refrain from alcohol.

Charters testified that his “biggest concern[] [was] men around the home.” (App. 137-38). Specifically, in June of 2006, Mother had reported that a neighbor, Brandon Bradfield, had attacked her, throwing knives at her, choking her and threatening to burn down her home. Mother, however, had not notified the police. Charters testified that when he visited Mother’s apartment the following October, Bradfield had “answered the door” of Mother’s apartment. (App. 189).

Finally, Charters testified that he believed it would be difficult for Mother to parent five children. Charters expressed concern about Mother’s “inconsistency in meeting the case management goals” and worried “that the children would not be safe.” (App. 186-87).

Beth Moore of Families United testified that she supervised visitation between Mother and the children in August of 2005 and continued those services until October of

2006. Moore testified that Mother has had “problems off and on,” where she has done “well for periods of time” but then there have been “times when her behaviors and ability to stay on task have sharply deteriorated.” (App. 197). Moore also testified that Mother would experience great difficulties with the all-day visits, venting her frustration in front of the children, and Mother would fail to discipline the children or “redirect them from something that was unsafe” (App. 199).

Moore further testified to the following: that during the time period from July of 2005 to September of 2005, Mother “ended two visits early, [and] cancelled one visit to help [Father] with some paperwork because he was incarcerated”; (App. 201); from mid-August of 2005 to September of 2005, Mother missed four out of nine scheduled visits; Mother did not miss any visits scheduled during the period from October of 2005 to April 24, 2006; and Mother cancelled one visit during the time period between April 24, 2006 and June of 2006.

Moore testified that at times during the supervised visits, Mother would “become very angry, combative, upset” if she did not agree with the OFC’s guidelines and would complain about Moore in front of the children. According to Moore, when Mother thought that Moore had said something about her, she called Moore a bitch in front of K.M. and N.M.

Moore further testified that in the seventeen months since the children’s removal, Mother never had an overnight or unsupervised visit with the children because Mother failed to “demonstrate[] an ability to effectively parent the children.” (App. 213). Although semi-supervised visits were conducted, Moore testified that the OFC reinstated

fully supervised visits for the “security” of the children. (App. 212). Although Mother completed a parenting skills class in January of 2006, Moore opined that “[Mother]’s not been able to implement those skills.” (App. 249).

Laura Hawkins, a nurse specializing in child and adolescent psychiatry, testified that in June of 2005, she conducted a bonding and attachment assessment for the three youngest children at the OFC’s request. Hawkins testified that she provided and supervised therapy sessions on a weekly basis between Mother, B.M., M.M. and P.M. until May of 2006, when Hawkins advised the OFC that she did not believe Mother would be able to “provide a safe and nurturing environment for her children as custodial parent.” (App. 423). Hawkins testified that in her opinion, Mother could not properly parent her five children.

Mother testified that she was not employed and currently living in an efficiency apartment. According to Mother, she was continuing therapy sessions through Wabash Valley Hospital.

Mother testified that although she had had cockroaches in her apartment, she “don’t [sic] have no [sic] more.” (App. 259). Mother testified that her apartment was clean. Mother testified that she had been going through dumpsters with her cousin “[b]ecause he seen [sic] something that he wanted and he got it so [she] helped him carry it.” (App. 261). Mother testified that she thought she could address the unsanitary conditions better now that the children’s father would not be home “[b]ecause he was never there to do anything.” (App. 262).

Mother further testified that she believed that services helping her to keep the children in her home were not made available to her. Mother testified that she “would like to try to get some of [the children] back,” and felt she was able to do that “[b]ecause [she] can get a bigger place.” (App. 262).

Mother acknowledged missing a visitation with the children in September because she was incarcerated and missing another visitation because she was ill. Mother stated that the 2003 report of neglect was “because of the iguana.” (App. 269). Mother admitted to receiving services following that report, including services to help her learn how to clean her home.

On October 18, 2006, the trial court order terminated Mother’s parental rights as to all five children. In its order, the trial court made the following findings:

29. The Court finds as a matter of law that after years of rendering services of various kinds with different providers to this family that there is not any basis for any reasonable belief that the circumstances which resulted in the removal of the children from the parents’ care or the reasons for continued placement outside the home will be remedied. Parents failed to fully cooperate with and learn from services and do not indicate that they have a basic understanding or belief of the harm their children suffered in the home in the past. Parents are, therefore, unable to provide a minimally safe, secure and stable home for their children.

30. The Court finds as a matter of law that the continuation of the parent-child relations poses a threat to the well-being of the children[.]

31. The Court finds as a matter of law that it would not be in the interest of the children to try to reunite this family.

(App. 47).

DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002).

When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

Because subsection (b)(2)(B) is written in the disjunctive, however, the OFC need prove only one of the two elements by clear and convincing evidence. *See Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 153 n.5 (Ind. 2005). Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the children. *See I.C. § 31-35-2-4(b)(2)(B); A.N.J.*, 690 N.E.2d at 721 n.2.

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *A.N.J.*, 690 N.E.2d at 720. We consider only the evidence most favorable to the judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208.

Mother first asserts that the OFC failed to demonstrate a reasonable probability that the conditions resulting in the children's removal will not be remedied. To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court "may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent's response to those services. *Id.* "Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best interests of the child when evaluating the circumstances surrounding termination." *Id.* Thus, the trial court need not wait until a child is irreversibly harmed such that the child's

physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

In this case, there is ample evidence to demonstrate that the conditions resulting in the children's removal from Mother's care will not be remedied. Mother has had repeated contact with the OFC, which the trial court could properly consider as evidence of Mother's history of neglect. Even after the OFC removed the children from Mother's care due to neglect, Mother continued behaviors consistent with those that contributed to the removal. Mother continued to allow dogs into her home and did not keep a clean and sanitary home on a consistent basis. Furthermore, Mother failed to establish housing adequate for all five children and failed to obtain employment. Although Mother took advantage of services offered to her through the OFC, she demonstrated resistance and failed to implement skills taught to her. In fact, while Mother made some improvements to her living conditions, she never demonstrated that she could sustain such improvements with the additional burden of caring for five children since Mother's inability or refusal to adequately monitor and care for her children prevented the OFC from instituting visitation in Mother's home. Accordingly, we find sufficient evidence that the conditions, which resulted in the children's removal, will not be remedied.

Mother also asserts that the OFC failed to establish that termination of her parental rights are in the best interests of the children. For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence and determine whether the custody by the parent is wholly inadequate for the child's future physical, mental, and social growth. *In re J.K.C.*, 470 N.E.2d 88, 91 (Ind. Ct. App. 1984). In

making this determination, the trial court must subordinate the interest of the parent to that of the child involved. *Id.* “[T]he testimony of a child’s guardian ad litem regarding the child’s need for permanency supports a finding that termination is in the child’s best interests.” *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*.

Here, the evidence demonstrates that Mother has a history of neglecting the children. Despite the extensive services offered to Mother, she failed to adequately demonstrate a change in the conditions that necessitated the children’s removal.

Furthermore, Gerald Gruen, the Court Appointed Special Advocate (“CASA”) for all five children since August of 2005, testified that he supported the termination of Mother’s parental rights. Randall Collins, Mother’s family case manager from the OFC, testified that “[r]eturning the children to [Mother] would be a threat to her children’s safety.” (App. 216). Collins opined that termination of Mother’s parental rights would be in the children’s best interest due to Mother’s “inability to effectively parent and keep [her] children safe.” (App. 217).

We find that the record contains sufficient evidence that termination of Mother’s parental rights is in the best interests of the children. *See In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000) (holding that the testimony of the CASA and the family case manager, coupled with the evidence that the conditions resulting in the placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence that termination is in a child’s best interest). Thus, the elements necessary to sustain the termination of Mother’s parental rights were established by clear and convincing evidence.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.